

PATENTAtty Docket No.: 200400612-1
App. Ser. No.: 10/820,786**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1-48 are pending in the present application, of which, Claims 1, 20, 32, and 40 are independent.

Improper Restriction Requirement

Although an election to one of the alleged species has been made herein below, it is respectfully submitted that the Restriction Requirement dated December 16, 2005 is improper and should be withdrawn for at least the following reasons.

The Restriction Requirement is clearly improper because it lists Figures 6A and 6B as comprising the fifth Species of the present invention. Figures 6A and 6B, however, do not even form part of the present invention because they are clearly labeled as "Prior Art" in the drawings and are labeled as depicting illustrations of a "conventional vapor-compression cycle" and a "chart for a conventional air conditioning unit." As such, Figures 6A and 6B cannot be considered as Species of the invention.

The Restriction Requirement is also clearly improper because the alleged species are not patentably distinct from each other and thus fails to meet the criteria set forth in MPEP 803. More particularly, the Official Action has failed to show that the alleged inventions are independent or distinct as claimed and that there would be a serious burden on the examiner if restriction is not required. In fact, the groupings of the alleged species do not support the allegation that the claimed invention is directed to multiple species.

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For instance, the indication that the illustration of Figure 1 is a patentably distinct or independent species from the illustrations of Figures 2A and 2B is clearly improper. Figure 1 shows a data center in which the claimed workload placement system, depicted in Figures 2A and 2B may be employed. In one regard, many of the features depicted in Figure 1 are depicted in greater detail in Figures 2A and 2B, and these figures are thus related.

As such, these illustrations cannot be considered as being "independent" or "distinct" as defined in MPEP 802.01. As stated therein, for inventions to be independent, the claimed invention must be "unconnected in design, operation, and effect." In addition, that section of the MPEP indicates that "[t]wo or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. Examples of related inventions include combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc."

With regard, to Figures 2A and 2B, Figures 3A and 3B, and Figures 4A, 4B, and 5, all of the illustrations depicted in these figures are related to each other and are thus not independent or distinct. For instance, Figures 4A and 4B depict examples of methods in which the workload placement systems depicted in Figures 2A and 2B may be operated. In this regard, Figures 4A and 4B and Figures 2A and 2B are related as process and apparatus for its practice.

Moreover, the Official Action has indicated that Species IV includes the methods depicted in Figures 4A and 4B and the computer system depicted in Figure 5. As disclosed in the present application, the computer system of Figure 5 may be employed as a number of different components depicted in Figures 2A and 2B. In addition, the computer system has

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been disclosed as being useable to perform the methods depicted in Figures 4A and 4B.

These relationships provide further evidence that the illustrations in Figures 2A and 2B are related to the illustrations in Figures 4A and 4B.

For at least the foregoing reasons, the Examiner is respectfully requested to withdraw the restriction requirement and to examine all of the claims pending in the present application.

Restriction Requirement

The aforementioned Official Action asserts that the present application contains claims that are directed to five patentably distinct species of the claimed invention. As defined in the Official Action, these species are:

Species I: Figure 1.

Species II: Figures 2A and 2B.

Species III: Figures 3A and 3B.

Species IV: Figures 4A, 4B, and 5.

Species V: Figures 6A and 6B.

A requirement to elect a single disclosed species of the five identified species has been imposed on the basis that the above-identified species are allegedly patentably distinct from each other. In addition, the Official Action alleges that no claim is generic.

In response to that election of species requirement, Applicants hereby elect, with traverse, Species II of the invention. Claims 1-48 are readable on the elected species. In

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addition, Claims 1-48 are considered to be generic to Species I-IV. Moreover, Claims 1-19 and 32-39 are considered to be generic to Species I-III.

Although an election has been made in response to the Official Action, Applicants respectfully traverse the Restriction Requirement for at least the reasons set forth herein above.

In light of the foregoing, withdrawal of the restriction requirement and examination of all of the claims of this application are respectfully requested.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the above-identified application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

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